

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ANDREA M. LESTER,

Plaintiff,

v.

**3:13-CV-531
(FJS/ATB)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES

OF COUNSEL

OLINSKY LAW GROUP

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Attorneys for Plaintiff

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**SOCIAL SECURITY ADMINISTRATION
OFFICE OF REGIONAL GENERAL
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Attorneys for Defendant

ANDREEA L. LECHLEITNER, ESQ.

SCULLIN, Senior Judge

ORDER

On May 2, 2011, Plaintiff "protectively filed" applications for Social Security Disability insurance Benefits ("DIB") and Supplemental Security Income ("SSI") benefits, alleging disability beginning March 28, 2011. The Commissioner initially denied the applications on June 27, 2011. Administrative Law Judge ("ALJ") Robert Wright conducted a hearing on May 18, 2012, at which Plaintiff and a vocational expert testified. On June 15, 2012, the ALJ issued a decision denying Plaintiff's applications for benefits. The ALJ's decision became the

Commissioner's final decision when the Appeals Council denied Plaintiff's request for review on March 15, 2013. Plaintiff then commenced this action on May 7, 2013, seeking final review of the Commissioner's final decision. *See* Dkt. No. 1. Defendant filed an answer and the administrative record on August 27, 2013. *See* Dkt. Nos. 8-9. Plaintiff filed her brief on October 15, 2013, *see* Dkt. No. 12; and Defendant filed her brief on December 2, 2013, *see* Dkt. No. 14.

On May 28, 2014, Magistrate Judge Baxter issued a Report-Recommendation, in which he recommended that this Court reverse the Commissioner's decision and remand this case, pursuant to sentence four of 42 U.S.C. § 405(g), for a proper determination of Plaintiff's residual functional capacity and other further proceedings consistent with his Report-Recommendation. *See* Dkt. No. 15 at 27. The parties did not file any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Baxter's May 28, 2014 Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Baxter's May 28, 2014 Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

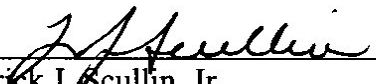
ORDERS that the Commissioner's decision is **REVERSED** and this case is **REMANDED**, pursuant to sentence four of 42 U.S.C. § 405(g), for a proper determination of

Plaintiff's residual functional capacity and other further proceedings, consistent with Magistrate Judge Baxter's Report-Recommendation; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Plaintiff and close this case.

IT IS SO ORDERED.

Dated: September 24, 2014
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge